

REMARKS

The Office Action of August 24, 2005 was received and carefully reviewed. Reconsideration and withdrawal of the currently pending rejections are requested for the reasons advanced in detail below.

Claims 1-13 are pending, of which claims 1, 5 and 10-13 are independent.

Referring to the detailed Office Action, the drawings stand objected to under 37 C.F.R. §1.83(a) as failing to show every feature of the invention specified in the claims. In response, Applicants respectfully traverse this objection for the reason that the claimed features are sufficiently shown in the drawings as well as described in the specification. Moreover, Applicants note that the claimed features, such as “the metal advanced lateral crystallization region” and “plurality of metal advanced crystallization regions”, etc., are actually sufficiently shown in the drawings such that one of ordinary skill in the art at the time the invention was made would understand the claimed features from reading the specification and studying the drawings.

Further, Applicants note that the objection to the drawings is directly related to a 35 U.S.C. §112, 1st paragraph, rejection of claims 3-9 and 13. Hence, once a resolution of the alleged §112, 1st paragraph, issues is reached, and if the Examiner still deems that the drawings as insufficient in showing the details of the claim features, Applicants will consider submitting more amended drawings.

The specification stands objected to as failing to provide proper antecedent basis for the claimed subject matter. In response, Applicants respectfully submit that support for all the claim language was provided with the Request for Interference Under 37 C.F.R. 1.607 filed on May 29, 2002 and in the Appeal Brief filed May 5, 2005 with a claim chart included in the Evidence Appendix thereof. A copy of this claim chart is attached hereto as a courtesy copy for the Examiner. Applicants submit that, as can be seen from this chart, there is clearly adequate support for each any every claim limitation. In particular support in the specification is provided for the features “a metal advanced lateral crystallization region” in claims 1-5 and 9-13; “a plurality of metal advanced crystallization regions” in claims 1 and 10; “a metal advanced crystallization region” in claims 6-7 and 9; “a metal induced lateral crystallization region” in claims 12-13 and “a plurality of metal induced crystallization regions” in claim 12, and etc., that are noted by the Examiner in the rejection. Moreover, the

specification is very detailed on how the regions are formed and what occurs in each region during formation. Hence, the specification, drawings and claims, as well as the prosecution history of this application leave no uncertainty regarding support for the claimed features.

Claim 2 stands objected as containing minor informalities. In response, Applicants have amended claim 2, as shown above, to correct a minor grammatical error noted as suggested by the Examiner.

Claims 3-9 and 13 stand rejected under 35 U.S.C. §112, 1st paragraph, as failing to comply with the written description requirement. With respect to claim 3, the Examiner stated that there is no support for the “metal advanced lateral crystallization region including a channel region (Claim 1) and including source and drain regions (Claim 3). However, Applicants respectfully submit that the Examiner’s statement is not appropriate because the metal advanced lateral crystallization includes a region which the crystal grew in the horizontal direction from the region into which nicked was introduced, as supported on page 14, line 30, page 15, line 1 of the specification.

With respect to claim 4, the Examiner stated that no dopant portions exist between the channel region and the source region 16A and the drain region 16B. However, Applicants respectfully submit that the Examiner’s statement is not appropriate because that an offset region including no dopant appears to be formed between the channel region and the source and drain regions. (page 7, lines 15-17; Fig. 1B)

With respect to claims 5-9 and 13, the Examiner stated that there is no support for the first and second source portions and the first and second drain portions. However, Applicants respectfully submit that the Examiner’s statement is not appropriate. As Applicants have already mentioned in page 14 of the Appeal Brief filed May 5, 2005, as long as any “grain boundary” exists in each of the source and drain portions, the grain boundary defines the first and second source portions and the first and second drain portions.

Applicants note that, since the §112, 1st paragraph rejection is related to the objection to the specification, Applicants’ remarks in relation to the objection to the specification set forth above are also applicable to the §112, 1st paragraph rejection.

Further, the specification is written for the level of skill in the art. See, e.g., *In re Lange*, and *In re Smythe*. *In re Lange* (CCPA 209 USPQ 288, 294 (1981), the Court held that the disclosure of an application must be read in light of the knowledge possessed by

those skilled in the art and that such knowledge can be established by reference to patents or publications.

Likewise, in *In re Smythe*, 480 F.2d 1376, 1382, 178 USPQ 279, 284 (CCPA 1973), the Court stated that it is only required, for example, that the specification describe the invention sufficiently for those of ordinary skill in the art to recognize that the Applicant invented the subject matter he now claims. As set forth above, Applicants have clearly described each and every claimed feature of the present invention, as shown in the claim chart.

Moreover, as submitted in the Appeal Brief filed May 5, 2005, Applicants reiterate that the Examiner has failed to meet the initial burden required by the case law. Specifically, the Examiner does not set forth a specific, detailed reasoning for the rejection, i.e., point out where support is clearly filed. See, M.P.E.P. 2163.02 and 2163.04 which state:

The courts have described the essential question to be addressed in a description requirement issue in a variety of ways. An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an Appellant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

The inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. See, e.g., *In re Marzocchi*, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an Appellant's disclosure a description of the invention defined by the claims. *Wertheim*, 541 F.2d at 263, 191 USPQ at 97.

Moreover, the case law set forth in M.P.E.P. 2111.01 clearly allows the Applicant to be his own lexicographer in drafting the claims.

Applicant may be his or her own lexicographer **>; however any special< meaning assigned to *>a< term ** "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). >See also *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999) and MPEP § 2173.05(a) <2100_2173_05_a.htm>.< as long as terminology is supported by the specification.

Further, the Federal Circuit in *Union Oil Co. of California v. Atlantic Richfield Co.*, 208 F3d 989, 54 USPQ2s 1227; (Fed. Cir. 2000) relies heavily on Wertheim and makes it clear that precise recitation of the claim limitation in the disclosure is not requirement for "written description" to be satisfied, i.e., the invention does not have to be described *ipsis verbis* in order to satisfy the description requirement of section 112. In view of the foregoing, it is believed that the rejection under Section 112, 1st paragraph, should be withdrawn.

Applicants also note the Examiner has failed to expressly address Applicants' arguments provided in Responses by Applicants during prosecution of this application such that it is entirely unclear why the rejection is being maintained. As an example, Applicants note that the Office Action of March 1, 2004 provided the initial rejection under 35 U.S.C. 112, first paragraph. The Examiner in the Office Action provided an explanation for the rejection as follows:

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims require essential or critical features which are not adequately described in the specification and which are not conventional in the art or known to one of ordinary skill in the art. For example, consider the features "a metal advanced lateral crystallization region" in claims 1-5 and 9-11; "a plurality of metal advanced crystallization regions" in claims 1 and I 0; "a metal advanced crystallization region" in claims 6-7 and 9; "a metal induced lateral crystallization region" in claims 12-13; and "a plurality of metal induced crystallization regions" in claim 12. There is insufficient description of these specific features in the specification that the knowledge and level of skill in the art would not permit one skilled in the art immediately envisage the product claimed from the disclosed process.

In the response to the Office Action filed August 2, 2004, Applicants provided argument as well as another copy of the detailed claim chart that provides specific support within the specification for each feature of each claim in the application. More importantly, the claim chart provides specific support for each alleged inadequately described feature cited by the Examiner.

In response to the Request for Reconsideration filed by Applicants, an Office Action, dated October 13, 2004, containing the exact rejection as in the Office Action dated March 1, 2004 was issued. The wording of the rejection was exactly the same as in the Office Action of March 1, 2004. Applicants note that the Examiner did not make any effort to rebut any of the citations provided in the claim chart provided by Applicants. Nor did the Examiner elaborate or provide any reasoning as to why the rejection was being maintained.

Further, in the final Office Action mailed October 13, 2004, claims 1-13 were rejected under 35 U.S.C. §112, 1st and 2nd paragraphs. However, in the Office Action mailed August 24, 2005, which was issued in response to the Appeal Brief filed May 5, 2005, the Examiner only rejected claims 3-9 and 13 under 35 U.S.C. §112, 1st paragraph. Accordingly, in the same spirit that claims 1-2 and 10-12 are no longer rejected under §112, 1st paragraph, and in view of the detailed support in the pending application provided in the claim chart provided to the Examiner and the utter lack of response by the Examiner, Applicants respectfully request reconsideration and withdrawal of the §112, 1st paragraph rejection of claims 3-9 and 13.

Claims 1-3, 5, 8 and 10-12 stand rejected under 35 U.S.C. §102(b) as being anticipated by Hideaki Oka (JP 02-140915 – hereafter Oka). This rejection is respectfully traversed at least for the reasons provided below.

In this rejection, the Examiner alleged that Oka discloses the metal advanced crystallization region 107 which is located outside the channel region, as shown in Figs. 1(c) and 1(d). However, Applicants respectfully disagree with the Examiner's allegation. In Oka, the alleged "metal advanced (induced) crystallization region" (i.e., a region into which the metal 104 was introduced, as shown in Figure 1(b) of Oka) appears to be already removed by patterning, such as disclosed on page 8, lines 10-11 of the translation and in Figure 1(c). That is, regions 107 only includes source and drain regions and does not include the "metal

advanced (induced) region” as alleged by the Examiner.

Consequently, since each and every feature of the present claims is not taught (and is not inherent) in the teachings of Oka, as is required by MPEP Chapter 2131 in order to establish anticipation, the rejection of claims 1-3, 5, 8, and 1-12, under 35 U.S.C. §102(b), as anticipated by Oka is improper.

With respect to the §102(b) rejection of independent claims 5 and 11 on page 8 of the Office Action, Applicants note that Examiner essentially combined the above-discussed §112, 1st paragraph rejection with the §102(b) rejection of claims 5 and 11. Further, Applicants note that claim 11 is not formally rejected under §112, 1st paragraph in the Office Action. Accordingly, the Examiner is respectfully urged to reconsider the above-discussed §112, 1st paragraph rejection so that there is be no ambiguity as to how Oka is interpreted by the Examiner and how the Examiner applies Oka in the rejection of claims 5 and 11. Further, Applicants respectfully submit that proper support and antecedent basis for “a metal advanced lateral crystallization region” are well established, as set forth above. Hence, Applicants’ arguments set forth above in relation to claims 1, 10 and 12 are also applicable to claims 5 and 11.

In view of the foregoing, it is respectfully requested that the rejections and objection of record be reconsidered and withdrawn by the Examiner, that claims 1-13 be allowed and that the application be passed to issue. If a conference would expedite prosecution of the instant application, the Examiner is hereby invited to telephone the undersigned to arrange such a conference.

Respectfully submitted,



Luan C. Do
Registration No. 38,434

NIXON PEABODY LLP
Suite 900, 401 9th Street, N.W.
Washington, D.C. 20004-2128
(202) 585-8000